No. 586

In the

# Supreme Court of the United States

OCTOBER TERM, 1963

In the Matter of the Petition of THE HOUSING AUTHORITY of the City of Seattle to Acquire by Eminent Domain Lot 8 of Block 68, Terry's First Addition to Seattle, for the Purpose of Providing Safe and Sanitary Accommodations for Persons of Low Income.

WALTER SCOTT BROWN and HELEN M. BROWN, husband and wife, *Petitioners*,

vs.

THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR KING COUNTY, HONORABLE EDWARD E. HENRY, JUDGE, *Respondents*.

## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

HULLIN, EHRLICHMAN, CARROLL & ROBERTS
*Attorneys for Petitioners.*

614 United Pacific Building,
Seattle, Washington 98104.

THE ARGUS PRESS — SEATTLE WASHINGTON

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| In the Matter of the Petition of THE HOUSING AUTHORITY of the City of Seattle to Acquire by Eminent Domain Lot 8 of Block 68, Terry's First Addition to Seattle, for the Purpose of Providing Safe and Sanitary Accommodations for Persons of Low Income: | |
| WALTER SCOTT BROWN and HELEN M. BROWN, husband and wife, *Petitioners*, vs. THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR KING COUNTY, HONORABLE EDWARD E. HENRY, JUDGE, *Respondents*. | No. |

## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

WALTER SCOTT BROWN and HELEN M. BROWN, husband and wife, pray that a Writ of Certiorari issue to review the Judgment of the Washington Supreme Court entered in the above entitled case on September 20, 1963.

## JURISDICTION

The Judgment of the Supreme Court of Washington was entered on September 20, 1963. The jurisdiction of this Court is invoked under the Fourteenth Amendment to the United States Constitution since the petitioner's property is being deprived by a Washington

State agency without due process of law. This case also involves the United States Code, Title 42, Sections 1401, 1402 and 1410 and its implementation by an agency of the State of Washington.

## STATEMENT OF THE CASE

The subject matter of this case is the manner and method by which the Seattle Housing Authority condemned petitioner's property. There was an adjudication of public use of petitioner's property by Judge Edward E. Henry of the Superior Court of the State of Washington which was subsequently affirmed by the Supreme Court of the State of Washington. The Housing Authority of the City of Seattle is a creature of the laws of the State of Washington organized and operating under the Revised Code of Washington, Chapter 35.82.

The condemnor. The Housing Authority of the City of Seattle proposes to expand its existing Yesler Terrace Housing Project by the erection of a high-rise structure containing approximately 300 apartments. The petitioner, a plastic surgeon in the City of Seattle, owns two lots in the immediate vicinity. One lot is immediately adjacent to the high-rise project on the east and is presently improved by petitioner's plastic surgery clinic and residence.

The petitioner's second lot is the subject of this condemnation action. It is presently used by petitioner as a parking lot for the convenience of the staff and patients at the clinic. No property is presently available in the area for parking as a substitute for petitioner's

lot and without adequate parking it is probable that the petitioner will have to move his clinic.

This condemnation involves an area which is only a small portion of an over-all project, called Wash 1-9. The basic project was ordered by Seattle Housing Authority Resolution 1158 as enacted on November 6, 1961. By Seattle Housing Authority Resolution 1198, the condemnation of the Brown property was ordered on November 26, 1962.

The basic resolution was adopted under circumstances disclosed in the Statement of Facts filed herein. The meeting was not held on the regular meeting date of the Seattle Housing Authority. No notice was given the press or the radio. The meeting was held at the Rainier Club, not at the Board's office, its usual meeting place. A private, upstairs room was used at the club. It was a luncheon affair and the public was not invited nor was any notice given to the public or petitioner.

The Seattle Housing Authority took a voluntary nonsuit in that condemnation action against the same property because of a direct violation of the State of Washington Statute RCW 42.32.010 set out in relator's opening brief in support of Writ of Certiorari.

On November 26, 1962, the Commissioners were read six, single space typed resolutions they had previously enacted in connection with this project. This meeting or reading session convened at 4:30 p.m. and adjourned at about 6:30 p.m. Consisting of 32 legal size pages, this allowed less than four minutes for each sixty (60) line page. Mr. Ross, the executive director of the Housing Authority of the City of Seattle could recall no discussion at the meeting: just reading.

Thereafter, a resolution of ratification was adopted, allegedly providing due process of law necessary to right the wrongs done at the Rainier Club.

In neither meeting, at the Rainier Club nor during the rapid-reading demonstration in 1962, was any member of the public heard on the merits of these resolutions.

It is the contention of the petitioner that the combined procedures employed by the Housing Authority Commissioners effectively denied all citizens, and petitioner in particular, due process of law.

## QUESTIONS PRESENTED

Did the Seattle Housing Authority's secret clandestine meeting in the private Rainier Club, together with the non-deliberative, attempted ratification of the private meeting deny interested citizens and the petitioner of due process of law?

A Federal question of due process was raised at the trial court level, was presented to the Supreme Court of the State of Washington by Assignments of Error Numbers 1, 6, 9, 11 and 13, arguments appearing at pages 37 through 41 in Petitioner's Opening Brief in Support of Writ of Certiorari and at pages 1 and 9 through 11 of Relator's Petition and Brief for Rehearing.

The Supreme Court of the State of Washington passed upon these questions by stating: "The relators also say that the condemnation is a part of a project authorized at a clandestine meeting, contrary to RCW 42.32.010. That section provides that public notice shall

be given of board meetings at which resolutions are to be adopted. The record shows that such notice was given in this instance. The fact that the project was previously discussed at a private meeting, does not invalidate this later action, and the relators cite no authority so holding."

The record discloses that at the private meeting the enabling resolution giving a basis for the condemnation was actually adopted by vote. The second meeting, of which notice was given, involved only the reading and "ratification" of the prior resolutions without deliberation.

## REASON FOR GRANTING PETITION

In this instance, the Supreme Court of the State of Washington has decided several questions of substance not heretofore determined by the Supreme Court of the United States, namely: Are the constitutional requirements of due process satisfied in a state which adopted the following statute:

> RCW 42.32.010
>
> No board, commission, agency or authority of the State of Washington, nor the governing board, commission, agency or authority of any political subdivision exercising legislative, regulatory or directive powers, shall adopt any ordinance, resolution, rule, regulation, order or directive, except in a meeting open to the public and then only at a meeting, the date of which is fixed by law or rule, or at a meeting of which public notice has been given by notifying press, radio and television in the county and by such other means as may now or hereafter be provided by law: Provided, That

> this chapter shall not apply to the state legislature, the judiciary, or to those regulatory orders of quasi judicial bodies applicable only to named parties as distinguished from orders having general effect on the public or a class or group.

where all deliberations and a formal vote were taken in secret, without the requisite notice, and only a perfunctory reading of a resolution and its ratification take place at a later, duly noticed meeting?

These public notice statutes are of recent origin and are designed to enable the public to attend, hear and be a part of the deliberations of public bodies.

The decision below is in direct conflict with the true concepts of due process and individual liberties. The question of actions of agencies of the State and local governments as to the requirements of due process and the procedural aspects of their actions are of widespread importance both to the governmental units involved, their bond counsel and the citizens of the United States.

The review of this secret, clandestine meeting together with the later speed-reading passage of the resolution without deliberation is necessary to determine what constitutes a public meeting that will give due process to persons affected. The growth of governmental agencies and bureaus and their increasing involvement in the lives of man has caused great concern to constitutional writers and thinkers who are concerned with concepts of individual liberties and open government.

The applicable statute of the State of Washington provided certain safeguards and rules of procedure so

that due process of law would result. These safeguards were ignored thereby resulting in the rule of men and not rule of law. This Star Chamber type of meeting is totally repugnant to our Constitution and is without regard to the individual liberties of persons involved.

## CONCLUSION

It is submitted that the issue of due process as presented by the hearings, conduct, and meetings of governmental agencies is of fundamental importance and great magnitude as it relates to our concepts of individual liberties and open government and is a fit and proper area of review by the certiorari powers of the Supreme Court.

Respectfully submitted,

HULLIN, EHRLICHMAN, CARROLL & ROBERTS
*Attorneys for Petitioners.*

No. 686

# In the Supreme Court of the United States

OCTOBER TERM, 1963

In the Matter of the Petition of THE HOUSING AUTHORITY of the City of Seattle to Acquire by Eminent Domain Lot 8 of Block 68, Terry's First Addition to Seattle, for the Purpose of Providing Safe and Sanitary Accommodations for Persons of Low Income.

WALTER SCOTT BROWN and HELEN M. BROWN, husband and wife, *Petitioners*,

vs.

THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR KING COUNTY, HONORABLE EDWARD E. HENRY, Judge, *Respondents*.

## APPENDICES TO PETITION FOR A WRIT OF *CERTIORARI* TO THE SUPREME COURT OF THE STATE OF WASHINGTON

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## APPENDIX A

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

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| In the Matter of the Petition of The Housing Authority of the City of Seattle, to Acquire by Eminent Domain Lot 8 of Block 68, Terry's First Addition to Seattle, for the Purposes of The Housing Authority of the City of Seattle Under RCW 35.82, and in Particular the Purpose of Providing Safe and Sanitary Dwelling Accommodations for Persons of Low Income. | No. 594098 |

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter coming on regularly for hearing before the Honorable Edward E. Henry, Judge of the above entitled Court, on the 13th day of February, 1963, at the hour of 9:30 a.m., pursuant to notice heretofore issued in this cause; the petitioner appearing by its attorney, F. A. LeSourd, and the respondents appearing by their attorney, John D. Ehrlichman, and both parties having introduced evidence and exhibits and the court having heard and considered such evidence and exhibits and being fully advised, now makes and enters the following

### FINDINGS OF FACT

I.

Petitioner is a public body corporate and politic, organized and existing under the Housing Authorities law (RCW Chapter 35.82) with boundaries coextensive

with the City of Seattle and extending five miles therefrom.

II.

On November 26, 1962, at a meeting duly and legally called, notice of which was properly given to the public under RCW 42.32.010; the Board of Commissioners of petitioner adopted Resolution No. 1198, finding and resolving (1) that project WASH 1-9 is necessary for the purposes of The Housing Authority of the City of Seattle and in particular the purpose of providing safe and sanitary dwelling accommodations for persons of low income, (2) that the acquisition of Lot 8 of Block 68, Terry's First Addition to Seattle, according to plat recorded in Volume 1 of Plats, page 49, of the records of King County, Washington, known as Parcel 4 of Housing Project WASH 1-9, is necessary for such purposes, (3) that The Housing Authority of the City of Seattle shall take all necessary and proper steps to acquire said real property by the exercise of the power of eminent domain, and (4) that the Executive Director and attorneys of The Housing Authority of the City of Seattle are authorized and directed to proceed with such acquisition.

III.

The respondents, Walter Scott Brown and Helen M. Brown, his wife, are all of the parties interested in Lot 8 of Block 68, Terry's First Addition to Seattle, King County, Washington, and they have been duly served with notice in condemnation in this cause; and all processes in the above entitled court and cause have

been duly, regularly and properly made on said respondents and each of them.

IV.

The object and use for which the said land is sought to be condemned is Housing Project WASH 1-9, which is a project of approximately 300 units for the housing of elderly persons who are persons of low income as defined in RCW 35.82.020.

V.

The establishment of a housing project for elderly persons who are persons of low income as defined in RCW 35.82.020 is a public purpose.

VI.

There were in 1960, as of the last census, 8403 elderly households in Seattle with income, as defined by the United States Bureau of the Census, under $1,000.00 per year, and an additional 7312 elderly households with income, as so defined, between $1,000.00 and $1,499.00 per year.

VII.

Elderly persons of low income applying for public housing in the existing projects of The Housing Authority of the City of Seattle have increased over the last several years, and it is reasonable to assume that the Authority will be unable to accommodate in its existing facilities all who are eligible and apply.

VIII.

There were in 1960, as of the last census, 5,979 elderly households in Seattle occupying housing that was sub-

standard as defined by the United States Bureau of the Census.

IX.

There are a substantial number of elderly persons and households in Seattle who lack the amount of income necessary to enable them, without financial assistance, to live in decent, safe and sanitary dwellings.

X.

The Board of Commissioners of The Housing Authority of the City of Seattle, after due and proper consideration of relevant matters, has reasonably determined that Housing Project WASH 1-9 is necessary to assist in meeting the need of elderly persons of low income for decent, safe and sanitary dwellings.

XI.

The public interest requires the construction of Housing Project WASH 1-9.

XII.

There is a substantial concentration of both elderly persons and substandard housing in the central area of Seattle.

XIII.

The Board of Commissioners of The Housing Authority of the City of Seattle, after due and proper consideration of relevant matters, has reasonably determined that the most suitable site for Housing Project WASH 1-9 is the area between James Street on the north, Jefferson Street on the south, the new freeway on the west, and the alley between 8th and 9th

Avenues on the east, in the central area of Seattle. This site includes Lot 8 of Block 68, Terry's First Addition to Seattle.

XIV.

Lot 8 of Block 68, Terry's First Addition to Seattle, here sought to be condemned, is required and necessary for the purpose of Housing Project WASH 1-9 of The Housing Authority of the City of Seattle.

DONE IN OPEN COURT this 26th day of February, 1963.

EDWARD E. HENRY
*Judge.*

From the foregoing Findings of Fact, the court makes the following

## CONCLUSIONS OF LAW

I.

Petitioner has the legal authority to condemn the land here involved and has taken all steps necessary to the exercise of that authority.

II.

The taking of the land here involved for the purpose of a housing project for elderly persons who are persons of low income as defined in RCW 35.82.020 is a public use and the lands here involved are necessary to that use.

III.

Petitioner is entitled to a certificate of public use and necessity herein.

DONE IN OPEN COURT this 26th day of February, 1963.

EDWARD E. HENRY
*Judge.*

## APPENDIX B

### IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

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| In the Matter of the Petition of The Housing Authority of the City of Seattle, to Acquire by Eminent Domain Lot 8 of Block 68, Terry's First Addition to Seattle, for the Purposes of The Housing Authority of the City of Seattle Under RCW 35.82, and in Particular the Purpose of Providing Safe and Sanitary Dwelling Accommodations for Persons of Low Income. | No. 594098 |

### ORDER OF ADJUDICATION OF PUBLIC USE

This matter having come on regularly for hearing before the Honorable Edward E. Henry, Judge of the above entitled Court, on the 13th day of February, 1963, at the hour of 9:30 a.m., pursuant to notice heretofore issued in this cause, the petitioner appearing by its attorney, F. A. LeSourd, and the respondents appearing by their attorney, John D. Ehrlichman, and both parties having introduced evidence and exhibits and the court having heard and considered such evidence and exhibits and being fully advised, and having made and entered its findings of fact and conclusions of law in writing herein, now, therefore,

IT IS ORDERED, ADJUDGED AND DECREED that a declaration and certificate of public use and necessity is hereby granted to petitioner as to Lot 8 of Block 68, Terry's First Addition to Seattle, King County, Washington,

and that a jury be empanelled to ascertain and determine the compensation to be made in money, irrespective of any improvement proposed by the petitioner, to the respondents for the taking of said property, or by the court in case a jury is waived.

DONE IN OPEN COURT this 26th day of February, 1963.

/s/ EDWARD E. HENRY
*Judge.*

## APPENDIX C

### WASHINGTON STATE SUPREME COURT

[No. 36991. Department One. July 3, 1963.]

*In the Matter of the Petition of* THE HOUSING AUTHORITY OF THE CITY OF SEATTLE.
WALTER SCOTT BROWN, *et al., Relators*, v. THE SUPERIOR COURT FOR KING COUNTY, *Edward E. Henry, Judge, Respondent.**

*Certiorari* to review an order of the Superior Court for King County, No. 594098, Edward E. Henry, J., entered February 26, 1963. *Affirmed.*

Condemnation proceedings. Relators seek review of an order of public use and necessity.

*Hullin, Ehrlichman, Carroll & Roberts*, for relators.

*LeSourd & Patten* and *F. A. LeSourd*, for respondent.

PER CURIAM. — In this action to condemn certain property of the relators, The Housing Authority of the City of Seattle showed that it needed Lot 8, Block 68, adjacent to Yesler Terrace, an existing public housing project, for the erection of a proposed high-rise apartment building for the housing of elderly persons of low income, according to the trial court's findings. An order of public use and necessity was accordingly entered, and the relators applied for a writ of *certiorari*, contending that the findings were not supported by the evidence.

In enacting RCW 35.82.010, the legislature recognized the existence of unsafe and unsanitary dwelling facilities in this state, which are occupied by persons

of low income who cannot afford decent housing. It declared *inter alia:*

"(3) . . . and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired and are governmental functions of state concern; . . . "

The relators do not question the correctness of this declaration; but they contend that the building of a new apartment house for the accommodation of elderly persons of low income is not necessary, and that it is not necessary to acquire their lot for the proposed building. We do not find it necessary to discuss the evidence at length. Suffice it to say that there was substantial evidence to support the trial court's findings that The Housing Authority reasonably determined that the project is necessary and that the land is necessary for the project.

[1] The rule is that a determination by the proper municipal authorities that a necessity exists is conclusive, in the absence of actual fraud, or such arbitrary or capricious conduct as would amount to constructive fraud. *King Cy. v. Theilman*, 59 Wn.(2d) 586, 369 P.(2) 503; *State ex rel. Northwestern Elec. Co. v. Superior Court*, 28 Wn.(2d) 476, 183 P.(2d) 802, 173 A.L.R. 1351; *State ex rel. Church v. Superior Court*, 40 Wn.(2d) 90, 240 P.(2d) 1208. There is no contention that any of these factors was present in this case and no evidence to support such a contention if it were made.

[2] The relators also say that the condemnation is a

part of a "project authorized at a clandestine meeting, contrary to RCW 42.32.010." That section provides that public notice shall be given of board meetings at which resolutions are to be adopted. The record shows that such notice was given in this instance. The fact that the project was previously discussed at a private meeting does not invalidate this later action, and the relators cite no authority so holding.

[3] Error is assigned to the admission of testimony by an employee of The Housing Authority that applicants for housing had complained that they could not find adequate accommodations at prices which they could afford. We assume, without deciding, that this testimony was not competent, as the relators contend, because it was hearsay. Even so, the admission of the evidence was not error warranting a reversal, for the relators fail to show wherein they were prejudiced by its admission. There was a plethora of evidence tending to show that there was a scarcity of safe and sanitary housing for the elderly with low incomes, which was more than sufficient to support The Housing Authority's determination.

The writ is quashed.